

**GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 2004**

**SESSION LAW 2004-204 EXTRA SESSION
SENATE BILL 2**

AN ACT TO PROVIDE A TAX CREDIT FOR CERTAIN MAJOR COMPUTER
MANUFACTURING FACILITIES AND TO ENHANCE CERTAIN EXISTING
TAX INCENTIVES FOR THOSE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3G.

"Tax Incentives for Major Computer Manufacturing Facilities.

"§ 105-129.60. Legislative findings.

The General Assembly finds that:

- (1) It is the policy of the State to stimulate economic activity and to create and maintain sustainable jobs for the citizens of the State in strategically important industries.
- (2) Both short-term and long-term economic trends at the regional, State, national, and international levels have made the successful implementation of the State's economic development policies and programs both more critical and more challenging; in particular, national trade policies and the resulting impact on domestic competitiveness have made the retention of manufacturing jobs more difficult at a time of transition in the national, State, and regional economies.
- (3) Manufacturing employment in the State has been disproportionately affected by trade policies and global economic trends, resulting in the loss of jobs by many in the State's capable industrial workforce.
- (4) Computer manufacturing and distribution has been an important industry for the State and has prospered in this State due to our strong and productive workforce, focused worker training programs, research capabilities, tradition of innovation, and concentration of companies.
- (5) The computer manufacturing and distribution industry will remain a vital part of the world's, nation's, and State's future economy as society becomes more dependent on advanced computer technology.
- (6) It is the intent of the State to encourage the sustainability of this industry cluster in this State and to encourage the maintenance and growth of computer manufacturing and distribution employment in the State through tax policies, investments in training capacity, and other policies and programs.
- (7) The State must be an innovative leader in creating policies and programs that encourage the maintenance of manufacturing jobs in this country and State and in the development of efforts to support manufacturers during the transitional period as they adapt to rapidly changing global conditions.

"§ 105-129.61. Definitions.

The following definitions apply in this Article:

- (1) Computer manufacturing. – Defined in G.S. 105-164.14.

- (2) Facility. – A single building or structure or a group of buildings or structures that are located on a single parcel of land or on contiguous parcels of land under common ownership and any other related real property contained on the parcel or parcels.
- (3) Full-time job. – A permanent position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year.
- (4) Increased employment level. – The total number of new full-time jobs and new permanent part-time jobs converted into full-time equivalences created by the taxpayer at the facility with respect to which the credit is claimed, either directly or indirectly through a related entity or strategic partner, as of December 31 as compared to the employment level of the taxpayer as of December 31 in the year in which the taxpayer begins construction of the facility with respect to which the credit is claimed or as of the date the Secretary makes the written determination required under G.S. 105-129.62, whichever is earlier. Jobs transferred from one area in the State to another area in the State are not considered new jobs for the purposes of this Article and may not be included in the increased employment level.
- (5) Related entity. – An entity for which the taxpayer possesses directly or indirectly at least eighty percent (80%) of the control and value.
- (6) Strategic partner. – A business that is engaged in activities at the facility that directly contribute to the manufacture and distribution of computers and computer peripherals and with whom the taxpayer has contracted to provide those activities at the facility in direct support of its manufacturing and distribution activities.
- (7) Successor in business. – A corporation that through amalgamation, merger, acquisition, consolidation, or other legal succession becomes invested with the rights and assumes the burdens of the predecessor corporation and continues the computer manufacturing and distribution business.
- (8) Unit output. – The total number of computers and computer peripherals produced, assembled, or manufactured at the facility during the taxable year.

"§ 105-129.62. Eligibility.

(a) Determination by Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this Article with respect to a facility in this State only if the Secretary of Commerce makes a written determination that the taxpayer has or is expected to have an increased employment level at the facility of at least 1,200 within five years after the time that the facility is first used as a computer manufacturing and distribution facility and that the taxpayer, either directly or indirectly through a related entity or strategic partner, has invested or is expected to invest at least one hundred million dollars (\$100,000,000) in private funds to construct a computer manufacturing and distribution facility over a five-year period. For the purposes of this Article, costs of construction may include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility.

(b) Health Insurance. – A taxpayer is eligible for the credit allowed under this Article with respect to a facility in this State only if the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level provide health insurance for all of the full-time jobs at the facility with respect to which the credit is claimed each year it claims a credit or carryforward of a credit. For the purposes of this subsection, an entity provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage

that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit allowed under this Article, the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level continue to provide health insurance for all the full-time jobs at the facility with respect to which the credit is claimed. If the taxpayer, or a related entity or strategic partner of the taxpayer whose employees are included in the increased employment level of the taxpayer, ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining carryforward of the credit.

(c) Environmental Impact. – A taxpayer is eligible for the credit allowed under this section with respect to a facility in this State only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no pending administrative, civil, or criminal enforcement actions based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and have had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. For the taxpayer's related entities and strategic partners, this subsection applies only to the activities of the related entity or strategic partner at the facility with respect to which a credit is claimed. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). Upon request, the Secretary of Environment and Natural Resources must notify the Department of Revenue of whether a person currently has any of these pending actions or has had any of these final determinations within the last five years.

(d) Safety and Health Programs. – A taxpayer is eligible for the credit allowed under this section with respect to a facility in this State only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no citations under the Occupational Safety and Health Act at the facility with respect to which the credit is claimed that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. Upon request, the Secretary of Labor must notify the Department of Revenue of whether a person has had these citations become final orders within the past three years.

(e) Overdue Tax Debts. – A taxpayer is eligible for the credit allowed under this section with respect to a facility only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no overdue tax debts that have not been satisfied or otherwise resolved.

(f) Relationship With Related Entities and Strategic Partners. – A taxpayer must obtain the written consent of related entities and strategic partners to include jobs created by those entities in the taxpayer's increased employment level. If a taxpayer fails to obtain this written consent, the taxpayer may not include jobs created by the applicable business in its increased employment level. This consent, once granted, is irrevocable. A job may not be included in the increased employment level of more than one entity. The taxpayer is responsible for providing all information needed to verify eligibility for the credit, including information relating to the related entities or strategic partners of the taxpayer.

"§ 105-129.63. Determination by the Secretary of Commerce.

The taxpayer must apply to the Secretary of Commerce for the determination required under G.S. 105-129.62. The application must be made under oath and must provide any information the Secretary requires in order to make the determination. The determination by the Secretary of Commerce is a factual determination. The Secretary must make this determination in any case in which the taxpayer can demonstrate performance or can provide a credible plan for performance.

If the taxpayer fails to create the required number of new jobs or to make the required investment, the information provided by the taxpayer on the application proves to have been false at the time it was given, and the person making the application knew or should have known that the information was false, the taxpayer forfeits any credits claimed under this Article with respect to the facility. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"§ 105-129.64. Credit for major computer manufacturing facilities.

(a) General Credit. – A taxpayer that meets the eligibility requirements of G.S. 105-129.62 is eligible for a credit against the taxes imposed by Articles 3 and 4 of this Chapter. For taxable years beginning with the 2006 taxable year, the amount of the credit allowable in a year is determined based on the taxable year, the unit output of the facility, the production factor, and the increased employment level at the facility in the current taxable year and previous taxable years.

(b) 2005 Taxable Year. – For taxable years beginning on or after January 1, 2005, but before January 1, 2006, the amount of the credit is equal to ten million dollars (\$10,000,000) if the taxpayer, either directly or through a related entity, has invested at least twenty-five million dollars (\$25,000,000) in private funds by the end of the taxable year to construct a computer manufacturing and distribution facility in this State.

(c) 2006-2009 Taxable Years. – For taxable years beginning on or after January 1, 2006, but before January 1, 2010, the maximum amount of the credit is ten million dollars (\$10,000,000). The amount of the credit that may be claimed is determined by multiplying the employment level adjustment factor by the lesser of ten million dollars (\$10,000,000) and the product of the unit output of the facility and the applicable production factor listed in subsection (f) of this section. For the purposes of this subsection, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's increased employment level for the year by the applicable target increased employment level provided in the table below:

<u>Year</u>	<u>Target Increased Employment Level</u>
2006	600
2007	1,000
2008	1,100
2009	1,500

(d) 2010-2014 Taxable Years. – For taxable years beginning on or after January 1, 2010, but before January 1, 2015, the maximum amount of the credit is fifteen million dollars (\$15,000,000) if the taxpayer has in any year attained an increased employment level of 1,500. Otherwise the maximum amount of the credit is ten million dollars (\$10,000,000). The amount of the credit is determined as follows:

(1) If the taxpayer has ever attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is the lesser of fifteen million dollars (\$15,000,000) and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in subsection (f) of this section. If the taxpayer's increased employment level has decreased by more than forty percent (40%) from that of the previous taxable year, the amount of the credit that may be claimed must be reduced by multiplying the amount

determined under this subdivision by a fraction, the numerator of which is the taxpayer's increased employment level for the taxable year and the denominator of which is 1,500.

- (2) If the taxpayer has never attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is equal to the employment level adjustment factor multiplied by the lesser of ten million dollars (\$10,000,000) and the product of the unit output of the facility and the applicable production factor listed in subsection (f) of this section. For the purposes of this subdivision, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's increased employment level for the year by 1,500.

(e) 2015-2019 Taxable Years. – For taxable years beginning on or after January 1, 2015, but before January 1, 2020, the maximum amount of the credit is twenty million dollars (\$20,000,000) if the taxpayer has in any year attained an increased employment level of 2,500. If the taxpayer has in any year attained an increased employment level of at least 1,500, but in no year has attained an increased employment level of at least 2,500, the maximum amount of the credit is fifteen million dollars (\$15,000,000). Otherwise the maximum amount of the credit is ten million dollars (\$10,000,000). The amount of the credit is determined as follows:

- (1) If the taxpayer has ever attained an increased employment level of at least 2,500 and the taxpayer's increased employment level for the current year is at least 1,500, the amount of the credit is the lesser of twenty million dollars (\$20,000,000) and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in subsection (f) of this section.
- (2) If the taxpayer has ever attained an increased employment level of at least 1,500 but has never attained an increased employment level of at least 2,500, or if the taxpayer has ever attained an increased employment level of at least 2,500 and the taxpayer's current increased employment level is less than 1,500, the amount of the credit that may be claimed is the lesser of fifteen million dollars (\$15,000,000) and the amount determined by multiplying the unit output of the facility by the applicable production factor listed in subsection (f) of this section. If the taxpayer's increased employment level has decreased by more than forty percent (40%) from that of the previous taxable year and (i) the increased employment level of the previous year was 1,500 or less or (ii) the increased employment level of the current year is 900 or less, the amount of the credit that may be claimed must be reduced by multiplying the amount determined under this subdivision by a fraction, the numerator of which is the taxpayer's increased employment level for the taxable year and the denominator of which is 1,500.
- (3) If the taxpayer has never attained an increased employment level of at least 1,500, the amount of the credit that may be claimed is equal to the employment level adjustment factor multiplied by the lesser of ten million dollars (\$10,000,000) and the product of the unit output of the facility and the applicable production factor listed in subsection (f) of this section. For the purposes of this subdivision, the employment level adjustment factor is the lesser of one and the number derived by dividing the taxpayer's employment level for the year by 1,500.

(f) Production Factor. – For taxable years beginning on or after January 1, 2006, but before January 1, 2007, the production factor is fifteen dollars (\$15.00). For all other taxable years, the production factor is six dollars and twenty-five cents (\$6.25).

(g) Expiration. – If the taxpayer fails to attain an increased employment level of at least 1,200, either directly or in conjunction with its strategic partners and related entities, within five years after beginning construction of the facility with respect to which a credit is claimed or the taxpayer fails to invest at least one hundred million dollars (\$100,000,000) in private funds to construct a computer manufacturing and distribution facility over a five-year period, the taxpayer may not take any further credits under this Article with respect to that facility. Failure to attain an increased employment level of 1,200 within the five years or to invest at least one hundred million dollars (\$100,000,000) in private funds to construct the facility does not result in forfeiture of credits previously taken under this section unless the provisions of G.S. 105-129.63 apply.

"§ 105-129.65. Allocation; cap; makeup; and carryforward.

(a) Allocation. – The credit allowed by this Article may be taken against the franchise taxes levied under Article 3 of this Chapter and the income taxes levied under Article 4 of this Chapter. When the taxpayer claims a credit under this Article, the taxpayer must elect the percentage of the credit to be applied against the taxes levied under Article 3 of this Chapter with any remaining percentage to be applied against the taxes levied under Article 4 of this Chapter. This election is not binding for the year in which it is made or for any carryforwards of that credit. A taxpayer may elect a different allocation for each year in which the taxpayer qualifies for a credit.

(b) Cap. – The amount of credit claimed in a taxable year under this Article may not exceed the lesser of the amount determined under G.S. 105-129.64 and the total amount of tax imposed under Articles 3 and 4 of this Chapter, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. Credits that may eliminate only a portion of the taxpayer's liability must be taken before credits that may eliminate all of a taxpayer's liability, which in turn must be taken before any credits that are refundable. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this Article for previous tax years.

(c) Makeup. – In any year in which the amount of the credit calculated based on output exceeds the applicable cap under G.S. 105-129.64, the excess credit may be credited to a make up account. Amounts credited to the make up account may remain in the account for seven years or until they are used as provided in this subsection, whichever is earlier. In any year in which the amount of the credit calculated based on output is less than the applicable cap under G.S. 105-129.64, the taxpayer may increase the credit allowed for that taxable year to the cap amount, as adjusted by any applicable employment level adjustment factor, by using excess credit available in the make up account. A successor in business may take the amounts available in a make up account of a predecessor corporation as if they were excess credits available in a make up account of the successor in business.

(d) Carryforward. – Any unused portion of a credit allowed under this Article may be carried forward for the next succeeding 25 years. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

"§ 105-129.66. Sunset.

This Article is repealed for business activities occurring in taxable years beginning on or after January 1, 2020."

SECTION 2. G.S.105-129.4 is amended by adding a new subsection to read:

"(b7) Major Computer Facilities. – A taxpayer that is otherwise eligible for a tax credit under this Article and who satisfies the conditions of G.S. 105-129.62 is eligible for the major computer facility enhancements provided for credits under this Article. The major computer facility enhancements are the following:

(1) The wage standard requirement does not apply to the activities of the taxpayer at the major computer facility.

- (2) For the credit for creating jobs under G.S. 105-129.8, the amount of the credit is increased by four thousand dollars (\$4,000) per job for jobs at the major computer facility.
- (3) For the credit for investment in machinery and equipment under G.S. 105-129.9, the applicable percentage is seven percent (7%) and the applicable threshold is zero dollars (\$0.00) regardless of the enterprise tier designation of the county in which the major computer facility is located.
- (4) For the credit for worker training under G.S. 105-129.11, the maximum amount of the credit per worker trained is one thousand dollars (\$1,000) regardless of the enterprise tier designation of the county in which the major computer facility is located.
- (5) For the credit for substantial investment in other property under G.S. 105-129.12A, the taxpayer is eligible for the credit regardless of the enterprise tier designation of the county in which the major computer facility is located."

SECTION 3. G.S. 105-164.14(j)(2) and (3) read as rewritten:

- "(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:
 - a. It is primarily engaged in one of the industries listed in this subsection.
 - b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in an enterprise tier one, two, or three area as defined in G.S. 105-129.3, the required amount is fifty million dollars (\$50,000,000). For all other facilities, the required amount is one hundred million dollars (\$100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term 'facility' has the same meaning as under G.S. 105-129.61.
- (3) Industries. – This subsection applies to the following industries:
 - a. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.
 - b. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.
 - d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term ~~does not include~~ includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals. terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.

- g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:
 1. Manufacturing complete automobiles and light-duty motor vehicles.
 2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
 3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.
- j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
 1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
 2. Processing botanical drugs and herbs by grading, grinding, and milling.
 3. Isolating active medicinal principals from botanical drugs and herbs.
 4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.
- m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components."

SECTION 4. G.S. 105-259(b) is amended by adding a new subdivision to

read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- ...
 (30) To verify with a related entity or strategic partner information relating to that entity provided by a taxpayer claiming a credit under Article 3G of this Chapter."

SECTION 5. Section 3 of this act becomes effective January 1, 2005, and applies to sales made on or after that date. The remainder of this act is effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005.

In the General Assembly read three times and ratified this the 4th day of November, 2004.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:11 a.m. this 5th day of November, 2004